

120 FERC ¶ 61,296
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Pacific Gas and Electric Company

Docket No. ER07-1213-000

ORDER ACCEPTING AND SUSPENDING
PROPOSED TARIFF CHANGES AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 28, 2007)

1. This order addresses a proposal by Pacific Gas and Electric Company (PG&E) to increase transmission service rates under PG&E's Transmission Owner Tariff (TO Tariff). Pursuant to our authority under section 205 of the Federal Power Act (FPA),¹ we accept the proposal for filing, suspend the rate increase for five months (to become effective on March 1, 2008, subject to refund), and establish hearing and settlement procedures.

I. PG&E's Proposal

2. PG&E adopted the TO Tariff in 1997 after turning over operation of its electrical transmission facilities to the California Independent System Operator Corporation (CAISO). The TO Tariff establishes the jurisdictional transmission revenue requirement that reflects PG&E's costs of constructing and owning its transmission system.

3. On July 30, 2007, PG&E proposed to increase its transmission revenue requirement in the TO Tariff, to be effective October 1, 2007, by approximately \$78.2 million. PG&E asserts that the proposed increase is necessary to reflect significant infrastructure expansion and replacement that will occur in the remainder of 2007 and in 2008. PG&E states that the expansion and replacement efforts are due to load growth, the interconnection of new generation facilities (including facilities that use renewable resources), the need to replace and modernize aging infrastructure, and the need to enhance and maintain the

¹ 16 U.S.C. § 824d (2000).

reliability of electrical transmission service. PG&E forecasts that, to meet these needs, it will spend \$513 million before the end of 2007 and \$618 million more in 2008. With the additional expenditures, PG&E's rate base would be \$2.803 billion in 2008, representing a 25 percent increase over PG&E's rate base of \$2.25 billion in 2006. The impact of these investments and other cost adjustments produces a total transmission revenue requirement for 2008 of approximately \$761.6 million as compared with expected current revenue levels of \$682.4 million.

4. PG&E proposes several adjustments to its transmission revenue requirements, including: (1) an increase for estimated transmission expenses to others; (2) a reduction for transmission revenues received from third parties; (3) an adjustment for revenues from secondary uses of PG&E's transmission system (New Products and Services);² (4) continued use of a ten-year depreciable life for the Path 15 Upgrade Project and (5) an increase to reflect payments that PG&E makes to generators. In addition, for end-user charges, PG&E proposes two additional increases, for deferred taxes and uncollectible expenses. PG&E states that the proposed revenue requirements reflect \$6.1 million in savings under PG&E's Business Transformation Initiative to improve customer service and efficiency.

5. PG&E proposes a rate of return on common equity (ROE) of 12 percent. The 12 percent ROE consists of a base 11.4 percent, which PG&E asserts is the midpoint of the range allowed under a traditional analysis, plus a 50 basis point adder as an incentive for participation in the CAISO and an additional 10 basis point adder for flotation costs.

6. Among the proposed changes discussed above, PG&E asks for the continuation of certain prior Commission actions: an adjustment for revenue sharing between ratepayers and shareholders for non-tariffed New Products and Services;³ and an adjustment for a 200 basis point rate of return incentive and a ten-year depreciable life for PG&E's investment in the Path 15 Upgrade Project previously approved by the Commission.

² PG&E is separately seeking, in Docket No. EL07-91-000, a declaratory order that would allow PG&E to continue its revenue-sharing mechanism for revenues from New Products and Services.

³ This component of PG&E's filing was, according to PG&E, approved by the Commission by prior orders. *See Pacific Gas and Elec. Co.*, 106 FERC ¶ 61,058 (2004); *see also Pacific Gas and Elec. Co.*, 90 FERC ¶ 61,314 (2000).

7. PG&E requests waiver of the obligation to provide the information in Statement BC, Reliability Data, which pertains to a utility's reliability standards and generating reserves, on the ground that those matters are now handled by the CAISO rather than PG&E.

II. Notice and Responsive Pleadings

8. Notice of PG&E's filing was published in the *Federal Register* with protests or interventions due on or before August 20, 2007.⁴ On August 8, 2007, the Energy Producers and Users Coalition (EPUC) filed a motion to intervene and protest. EPUC asserts that PG&E's charges to stand-by customers are discriminatory because PG&E allocates costs to such customers based on contract demand, but allocates costs to other end-users based on load at the twelve monthly peaks. On August 22, 2007, PG&E filed an answer to EPUC's protest. According to PG&E the Commission previously resolved this issue in PG&E's favor, although appellate review of the Commission's decision is underway.⁵

9. Timely motions to intervene were filed by Western Area Power Administration (Western), Southern California Edison Company (SoCal Edison), and San Diego Gas & Electric Company (SDG&E). Timely motions to intervene and protest were filed by California Electricity Oversight Board (CEOB); the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (the Cities); Metropolitan Water District of Southern California (Metropolitan); California Department of Water Resources State Water Project (SWP); Transmission Agency of Northern California (TANC); Modesto Irrigation District (Modesto); Sacramento Municipal Utility District (SMUD); Northern California Power Agency (NPCA); and the City of Redding, the City of Santa Clara and M-S-R Public Power Agency (Redding Parties). The California Public Utilities Commission (CPUC) filed a notice of intervention and protest.

10. Protesters object to various aspects of PG&E's proposal, including the proposed 12 percent ROE, alleged failure to account for sums collected for future removal costs, the accuracy and timing of specific capital additions, forecasted transmission-related operation and maintenance and general and administrative expenses, depreciation expense, cash working capital, and savings associated with the Business Transformation Initiative. Protesters assert that PG&E has not

⁴ 72 Fed. Reg. 45,032 (2007).

⁵ See PG&E August 22 Answer at 3 (citing *Pacific Gas and Elec. Co.*, 114 FERC ¶ 61,324, at P 9 (2006), *appeal docketed*, *Cogeneration Association of California v. FERC*, No. 06-1178 (D.C. Cir., May 24, 2006)).

justified an incentive adder to its ROE under Order No. 679⁶ because PG&E is an existing member of the CAISO. Protesters request the maximum five-month suspension period.

11. On September 5, 2007, PG&E filed an answer to TANC's protest. PG&E addressed, in particular, TANC's claim that PG&E has failed to account for sums collected for future removal costs. PG&E states that it maintains subsidiary records of removal costs, which are treated as a regulatory liability under PG&E's FERC Form No. 1, and has provided estimates of future removal costs as part of PG&E's present rate filing. On September 7, TANC answered PG&E's answer. According to TANC, PG&E has not sufficiently identified which portion of its regulatory liability represents removal costs and has not sufficiently supported its estimates of future removal costs.

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the parties that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PG&E's answer to EPUC's protest because the answer aided us in our decision making. We will reject PG&E's answer to TANC and TANC's answer to PG&E's answer; the parties may explore at settlement and hearing whether PG&E has properly identified and supported removal costs as part of its present filing.

B. Commission Determinations

13. PG&E's filing raises issues of material fact regarding, among other things, estimated transmission expense to third parties, forecasted capital investment, proposed Period II depreciation expense, cost allocation among existing wholesale transmission customers (ETCs), and crediting mechanisms that warrant hearing and settlement judge procedures. All issues raised by the filing, if not summarily disposed of in this order, shall be addressed at the hearing, including, but not

⁶ *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 386, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

limited to, the appropriate ROE component, the capitalization rate, and the range of reasonableness.

14. However, consistent with previous Commission orders, the Commission summarily accepts the following components of PG&E's filing: (1) PG&E's request for a 50 basis-point incentive for participation in the CAISO; (2) PG&E's request for a 200 basis-point ROE incentive and a ten-year depreciable life for PG&E's share of the Path 15 Upgrade Project;⁷ (3) the allocation of costs to stand-by customers; and (4) PG&E's request for waiver of the obligation to provide the information in Statement BC.

15. Consistent with our orders in *SDG&E* and *AEP*,⁸ we will grant up to 50 basis points of incentive ROE for participation in the CAISO, subject to suspension and the zone of reasonable returns determined at hearing. The Commission's decision to grant PG&E an incentive ROE for participation in the CAISO is consistent with the stated purpose of section 219 of the FPA as amended by the Energy Policy Act of 2005⁹ and is intended to encourage PG&E's continued involvement in the CAISO.

16. Regarding Path 15 issues, the Commission will allow for the continued use of a 200 basis-point ROE adder and a ten-year depreciable life for PG&E's share of the Path 15 Upgrade Project, previously accepted.¹⁰ This acceptance applies to this instant filing only, and PG&E in future cases will be required to apply for and demonstrate the need for future continued application of any investment incentives.

17. Regarding stand-by charges, we previously rejected EPUC's claim and therefore will not revisit the issue in this proceeding.¹¹ If EPUC prevails in

⁷ *Western Area Power Admin.*, 99 FERC ¶ 61,306 (2002) (Order Accepting Letter Agreement), *reh'g denied*, 100 FERC ¶ 61,331 (2002).

⁸ *See San Diego Gas & Elec. Co.*, 118 FERC ¶ 61,073, at P 25-26 (2007) (*SDG&E*); *American Elec. Power Service*, 120 FERC ¶ 61,205, at P 34 (2007) (*AEP*).

⁹ Energy Policy Act of 2005, Pub. L. No. 109-58, § 1241, 119 Stat. 594, 982-83 (2005), *to be codified at* 16 U.S.C. § 824s.

¹⁰ 99 FERC ¶ 61,306 at 62,280.

¹¹ 114 FERC ¶ 61,324, at P 9.

challenging the Commission's determination, the Commission may revisit the allocation of costs to stand-by customers at that time.

18. We also hereby grant PG&E's request for waiver of the obligation to provide the information in Statement BC because that information is now provided by the CAISO.

C. Hearing and Settlement Judge Procedures

19. Other than those issues summarily resolved above, PG&E's proposal raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.¹² All issues raised by the filing (other than those summarily decided in this order) may be explored at the hearing, whether specifically mentioned in this order or not.

20. Our preliminary analysis indicates that PG&E's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept PG&E's proposed rates for filing, suspend them and make them effective, subject to refund, and set them for hearing and settlement judge procedures.

21. In *West Texas Utilities Company*,¹³ the Commission explained that when its preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission generally would impose a maximum suspension. In the instant proceeding, our preliminary analysis indicates that PG&E's proposed rates may be substantially excessive. Therefore, we will suspend PG&E's proposed changes for the maximum five-month period to become effective March 1, 2008, subject to refund.

22. Issues relating to PG&E's proposed adjustment for New Products and Services, including whether PG&E included appropriate cost elements and

¹² In support of its request for a 12 percent ROE, PG&E asks us to take our reasoning in Order No. 679 into account here in order to accept its proposal. The Commission encourages and commends infrastructure replacement and modernization; however, mere citation to Order No. 679 goals and language is not enough to warrant wholesale acceptance of a rate filing or requested ROE. Here, there are issues of material fact that prevent summary acceptance of the filing and the requested ROE.

¹³ 18 FERC ¶ 61,189 (1982).

properly applied its revenue-sharing mechanism¹⁴ are the subject of a separate proceeding in Docket No. EL07-91-000. Therefore, determination of these issues will be subject to the outcome of a subsequent order in that proceeding.

23. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁵ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.¹⁶ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the Settlement Judge's appointment concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) PG&E's proposed rates are hereby accepted for filing and suspended for the maximum five-month period, to become effective on March 1, 2008, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice

¹⁴ Prior orders indicated that rate treatment of costs and revenues associated with New Products and Services would be considered in PG&E's first transmission rate filing after January 2007, which is the present rate filing. *See Pacific Gas and Elec. Co.*, 116 FERC ¶ 61,313, at P 17 (2006). *See also Pacific Gas and Elec. Co.*, 106 FERC ¶ 61,058, at P 1, 15 (2004); *Pacific Gas and Elec. Co.*, 90 FERC ¶ 61,314, at 62,037 (2000).

¹⁵ 18 C.F.R. § 385.603 (2007).

¹⁶ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of PG&E's proposed rate increases. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2006), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the date of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.